

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1639

WILLIAM M. BROADRICK, JIMMY R. URY, and CLIVE R. RIGSBY, for themselves and for the Class, "Classified Employees within the Classified Service of the State of Oklahoma,"

Appellants,

VERSUS

THE STATE OF OKLAHOMA, EX REL., THE OKLAHOMA STATE PERSONNEL BOARD, and its Members; THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and its Members; and LARRY DERRYBERRY, Attorney General of the State of Oklahoma, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA.

APPEAL FILED JUNE 19, 1972

PROBABLE JURISDICTION NOTED DECEMBER 11, 1972

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RELEVANT DOCKET ENTRIES

Trial Court

November 4, 1971	Filed—Complaint with Exhibits
November 29, 1971	Filed—Separate Answer of the Corporation Commission of the State of Oklahoma; and Charles Nesbitt, Ray C. Jones and Wiluburn Cartwright, in Their Capacities as Chairman, Vice-Chairman and Member, Respectively, of the Defendant Corporation Commission
December 10, 1971	Filed—Answer of Defendants, ex rel. Oklahoma State Personnel Board, Members thereof, Director thereof and Derryberry's Answer
January 7, 1972	Filed—Pretrial Order with Exhibits
February 28, 1972	Filed—Memorandum Opinion
February 28, 1972	Filed—Order
March 9, 1972	Filed—Motion for New Trial
April 3, 1972	Filed—Order Overruling Plaintiffs' Motion for New Trial
April 21, 1972	Filed—Notice of Appeal

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

William M. Broadrick, Jimmy R. Ury,
and Clive R. Rigsby, for themselves
and for the Class, "Classified Em-
ployees within the Classified Service
of the State of Oklahoma,"
Plaintiffs,

versus

) No. CIV-71-696

The State of Oklahoma, ex rel., The
Oklahoma State Personnel Board, and
Nathan A. Sams, Chairman, A. E. Plume,
Vice-Chairman, Tom R. Moore, Member,
Raymond H. Fields, Member, E. W. Harper,
Member, Joseph Turner, Member, and Mrs.
John D. (Helen) Cole, Member, in their
individual capacities and as members of
the defendant, Oklahoma State Personnel
Board; and Keith B. Frosco, Director of
the Oklahoma State Personnel Board; and
the Corporation Commission of the State
of Oklahoma, Charles Nesbitt, Chairman,
Ray C. Jones, Vice-Chairman, and Wilburn
Cartwright, Member, in their individual
capacities and as members of the defend-
ant, Corporation Commission; and Larry
Derryberry, Attorney General of Okla-
homa,
Defendants.

COMPLAINT

Come now William M. Broadrick, Jimmy R. Ury and Clive R. Rigsby, for themselves and for the class, "classified employees within the classified service of the State of Oklahoma," plaintiffs herein, and represent and show the Court as follows:

1. That plaintiffs, William M. Broadrick, Jimmy R. Ury and Clive R. Rigsby, are each citizens of the United

States of America and of the State of Oklahoma, and are employed by the defendant, Corporation Commission of the State of Oklahoma, an agency and instrumentality of the State created by Article 9, Section 15, Oklahoma Constitution; that the members constituting class are, for the most part, citizens of the United States and citizens of the State of Oklahoma, and employed by the several agencies of the State of Oklahoma pursuant to the Merit System of Personnel Administration Act of Oklahoma, 74 O.S. 1961, Sections 801 to 839, both inclusive, as amended, hereinafter called "Merit System Act."

2. That the defendant, Oklahoma State Personnel Board, is an agency and instrumentality of the State of Oklahoma created by Section 804 of the Merit System Act; that the defendants, Nathan A. Sams, A. E. Plume, Tom R. Moore, Raymond H. Fields, E. W. Harper, Joseph Turner, and Mrs. John D. (Helen) Cole are the Chairman, Vice-Chairman and Members, respectively, of the defendant Board; that defendant, Keith B. Frosco, is the Personnel Director and Chief Executive Officer of the Board.

3. That the defendant, Corporation Commission of the State of Oklahoma, is an agency and instrumentality of the State of Oklahoma, as set out in paragraph 1 above; that defendants, Charles Nesbitt, Ray C. Jones and Wilburn Cartwright, are the Chairman, Vice-Chairman and Member, respectively, of the Commission.

4. That the Attorney General of Oklahoma is named as a party defendant herein because the constitutional validity of a Statute of the State of Oklahoma is challenged herein.

5. That this is a civil class action brought on behalf of the plaintiffs, as well as on behalf of each and all other persons similarly situated who are classified employees of the State of Oklahoma within the classified service and therefore are so numerous as to make it impractical to bring them all before the Court; this action is brought to

enjoin the deprivation of the civil rights of plaintiffs and others similarly situated, and is authorized by 42 U.S.C., Section 1983, which provided:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

6. That defendants, and each of them, under color of 74 O.S. 1961, Section 818, are subjecting plaintiffs to the deprivation of the rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States, which Statute purports to make it unlawful and a cause for dismissal for any classified employee to "take part in the management of affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote." The full text of Section 818 is attached hereto and marked "Exhibit A."

7. That the blanket prohibition of political activity in Section 818 is an unjustified encroachment upon the plaintiffs' First Amendment rights of free speech, assembly and press.

8. That Section 818 is overly broad in that it abridges plaintiff's First Amendment rights to a far greater extent than is required to correct the evils at which the Statute is directed.

9. That Section 818 is unconstitutionally vague, and reasonable men often differ, and may only guess at what activities fall within the broad prohibitions in the Statute.

10. That Section 818 denies the equal protection of the laws to the class of citizens affected by the Statute in that it denies to that group of citizens the rights granted to all other citizens without justification for the distinction.

11. That Section 818 divests the class of Fifth and Fourteenth Amendment guarantees of due process of law in that plaintiffs are denied their political liberty without justification.

12. That Section 818 divests the class of Fifth and Fourteenth Amendment guarantees of substantive due process of law in that their vested property rights are subject to divestment without just cause or due process.

13. That plaintiffs, William M. Broadrick, Jimmy R. Ury and Clive R. Rigsby, by virtue of their employment with the State of Oklahoma, have acquired valuable vested property rights. The Merit System of Personnel Administration Act of Oklahoma, supra, vests said plaintiffs with rights of tenure during good behavior and the Oklahoma Retirement System Act vests said plaintiffs with valuable retirement benefits upon the condition that said plaintiffs be employed in good standing upon the date of their retirement.

14. That the defendants threaten to invoke the sanctions of Section 818 against said plaintiffs for certain alleged, but undefined, political activities of the plaintiffs, and the defendant, Oklahoma State Personnel Board, and its members threaten to order the defendant, Corporation Commission, and its members to dismiss plaintiffs from their employment pursuant to Section 818 which requires the defendant, Corporation Commission, to comply. The threats were communicated to each named plaintiff by three separate letters dated October 18, 1971, mailed to each named plaintiff by the defendant, Keith B. Froscó. True copies of the letters are attached to this Complaint and marked Exhibit "B"; that plaintiffs have no adequate remedy at law and the defendants will, if not enjoined by

this Court, undertake to affect the dismissal of plaintiffs from their employment, all under color of Section 818.

WHEREFORE, plaintiffs pray on their own behalf, and on behalf of all others similarly situated, that this Court enter its declaratory judgment herein, declaring 74 O.S. 1961, Section 818, unconstitutional and void, and that this Court issue its injunction prohibiting the defendants, and each of them, from proceeding under color of said Statute against the named plaintiffs and others similarly situated.

s/t Terry Shipley
119½ South Third Street
Noble, Oklahoma 73068 872-5111
Oklahoma City, Oklahoma 236-1200

s/t John C. Buckingham
Suite 1213, 100 Park Avenue
Building
Oklahoma City, Oklahoma 73102
Attorneys for Plaintiffs

Filed November 4, 1971

EXHIBIT "A"

§ 818. Discrimination and other prohibited acts.

No person in the classified service shall be appointed, to, or demoted or dismissed from any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations, or because of race, creed, color or national origin or by reason of any physical handicap so long as the physical handicap does not prevent or render the employee less able to do the work for which he is employed.

No person shall use or promise to use, directly or indirectly, any official authority or influence, whether pos-

sessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for consideration; provided, however, that letters of inquiry, recommendation and reference by public employees of public officials shall not be considered official authority or influence unless such letter contains a threat, intimidation, irrelevant, derogatory or false information.

No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification or appointment made under any provision of this Act or in any manner commit any fraud preventing the impartial execution of this Act and rules made hereunder.

No employee of the department, examiner, or other person shall defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under this law, or furnish to any person any special or secret information for the purpose of effecting the rights or prospects of any person with respect to employment in the classified service.

No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

No employee in the classified service, and no member of the Personnel Board shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; and no state officer or state employee in the unclassi-

fied service shall solicit or receive any such assessment, subscription or contribution from an employee in the classified service.

No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

Upon a showing of substantial evidence by the Personnel Director that any officer or employee in the state classified service, has knowingly violated any of the provisions of this Section, the State Personnel Board shall notify the officer or employee so charged and the appointing authority under whose jurisdiction the officer or employee serves. If the officer or employee so desires, the State Personnel Board shall hold a public hearing, or shall authorize the Personnel Director to hold a public hearing, and submit a transcript thereof, together with a recommendation, to the State Personnel Board. Relevant witnesses shall be allowed to present and testify at such hearings. If the officer or employee shall be found guilty by the State Personnel Board of the violation of any provision of this Section, the Board shall direct the appointing authority to dismiss such officer or employee; and the appointing authority so directed shall comply.

EXHIBIT B

[Letterhead of Oklahoma State Personnel Board]

October 18, 1971

Mr. William M. Broadrick
821 Nancy Drive
Ada, Oklahoma 74820

Dear Mr. Broadrick:

On Friday, October 15, 1971, the Oklahoma State Personnel Board met in open session and voted unanimously that the following charges be made:

WILLIAM M. (BILL) BROADRICK

Special Investigator (Corporation Commission), #4352

Mr. Broadrick knowingly violated the provisions of Title 74, O.S. 1961, Section 818, in that he took part in the management or affairs of a political campaign, and solicited and received campaign contributions.

Specifically, Mr. Broadrick participated in the 1970 re-election campaign of Corporation Commissioner Ray C. Jones by:

- (1) contacting other Corporation Commission employees seeking advice as to Commission employees who might "kick in" concerning the campaign,
- (2) contacting other Corporation Commission employees seeking their referrals to persons who might assist in the campaign,
- (3) directly soliciting money to be used in the campaign,
- (4) directly receiving solicited money to be used in the campaign,
- (5) directly receiving a contribution of money to be used in the campaign, and
- (6) receiving and distributing campaign posters.

Therefore, in accordance with the appropriate parts of, and as generally provided in, Sections 818 and 833 of Title 74, O.S. 1961, you may within fifteen (15)* day after receipt of this certified letter request a public hearing on the charges before the State Personnel Board.

If you should have any questions concerning the law, Rules or basic procedure, please do not hesitate to call on me.

Sincerely,

OKLAHOMA STATE MERIT SYSTEM

Keith B. Frosco, Director

KBF:mer

cc: Ray C. Jones, Commissioner, Oklahoma Corporation Commission

Wilburn Cartwright, Commissioner, Oklahoma Corporation Commission

Charles Nesbitt, Commissioner, Oklahoma Corporation Commission

[Letterhead of Oklahoma State Personnel Board]

October 18, 1971

Mr. Jimmy R. Ury
4816 Woodview
Oklahoma City, Oklahoma 73115

Dear Mr. Ury:

On Friday, October 15, 1971, the Oklahoma State Personnel Board met in open session and voted unanimously that the following charges be made:

JIMMY R. (JIM) URY

Motor Carrier Chief Enforcement Officer, #4224
Corporation Commission

Mr. Ury knowingly violated the provisions of Title 74, O.S. 1961, Section 818, in that he took part in the management or affairs of a political campaign.

Specifically, Mr. Ury participated in the 1970 re-election campaign of Corporation Commissioner Ray C.

Jones by contacting other Corporation Commission employees seeking their referral to persons who might assist in the campaign.

Therefore, in accordance with the appropriate parts of, and as generally provided in, Sections 818 and 833 of Title 74, O.S. 1961, you may within fifteen (15) days after receipt of this certified letter request a public hearing on the charges before the State Personnel Board.

If you should have any questions concerning the law, Rules or basic procedure, please do not hesitate to call on me.

Sincerely,

OKLAHOMA STATE MERIT SYSTEM

Keith B. Frosco, Director

KBF:mer

cc: Ray C. Jones, Commissioner, Oklahoma Corporation Commission

Wilburn Cartwright, Commissioner, Oklahoma Corporation Commission

Charles Nesbitt, Commissioner, Oklahoma Corporation Commission

[Letterhead of Oklahoma State Personnel Board]

October 18, 1971

Mr. Clive R. Rigsby
R. R. #1, Box 102-A
Ada, Oklahoma 74820

Dear Mr. Rigsby:

On Friday, October 15, 1971, the Oklahoma State Personnel Board met in open session and voted unanimously that the following charges be made:

CLIVE R. RIGSBY

District Office Assistant, Oil and Gas Conservation
(Corporation Commission), #0117

Mr. Rigbsy knowingly violated the provisions of Title 74, O.S. 1961, Section 818, in that he took part in the management or affairs of a political campaign, and solicited campaign contributions.

Specifically, Mr. Rigbsy participated in the 1970 re-election campaign of Corporation Commissioner Ray C. Jones by:

- (1) seeking out other Corporation Commission employees to assist in the campaign, and
- (2) soliciting money to be used in the campaign.

Therefore, in accordance with the appropriate parts of, and as generally provided in, Sections 818 and 833 of Title 74, O.S. 1961, you may within fifteen (15) days after receipt of this certified letter request a public hearing on the charges before the State Personnel Board.

If you should have any questions concerning the law, Rules or basic procedure, please do not hesitate to call on me.

Sincerely,

OKLAHOMA STATE MERIT SYSTEM

Keith B. Frosco, Director

KBF:mer

cc: Ray C. Jones, Commissioner, Oklahoma Corporation
Commission

Wilburn Cartwright, Commissioner, Oklahoma Corporation
Commission

Charles Nesbitt, Commissioner, Oklahoma Corporation
Commission

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

[TITLE OMITTED IN PRINTING]

SEPARATE ANSWER OF THE DEFENDANT CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; AND CHARLES NESBITT, RAY C. JONES AND WILBURN CARTWRIGHT, IN THEIR CAPACITIES AS CHAIRMAN, VICE-CHAIRMAN AND MEMBER, RESPECTIVELY, OF THE DEFENDANT CORPORATION COMMISSION.

Come now Defendants Corporation Commission of the State of Oklahoma; and Charles Nesbitt, Ray C. Jones and Wilburn Cartwright in their capacities as members of the Defendant Corporation Commission, and for their separate Answer to the Complaint of the Plaintiffs filed herein, state:

1. That these Defendants admit Plaintiffs' allegations in paragraphs numbered 1, 2, 3, 4, 6, 13 and 14 of the Complaint, except those portions of Paragraphs 6 and 14 which allege or imply that these Defendants threaten to dismiss Plaintiffs from their employment under color of 74 O.S. 1961, Section 818, but, to the contrary:

2. That these Defendants consider the Plaintiffs good employees and have not threatened to dismiss them, or any of them, and have no intention to dismiss them unless required to do so by a lawful order of an Authority authorized by law to compel these Defendants to dismiss Plaintiffs from their employment.

3. That the Defendant Oklahoma State Personnel Board has not furnished these Defendants with any details or information concerning the alleged violations of the Merit System Act other than the copy of the original notice of the general charges made by the Board, and these Defendants are not informed as to any specific violations which the Board may expect to prove; and these Defend-

ants deny that they solicited or encouraged the Plaintiffs to take part in any political activities at any time.

WHEREFORE, the Defendant Corporation Commission of the State of Oklahoma; and Charles Nesbitt, Ray C. Jones and Wilburn Cartwright, Chairman, Vice-Chairman and Member, respectively, of the Defendant Corporation Commission respectfully pray that this Court determine and declare whether or not 74 O.S. 1961, Section 818, is constitutionally valid and enforceable, and for such other relief as may be equitable and just in the premises.

- t/ Jack Swidensky, General Counsel
for the Corporation Commission
of the State of Oklahoma
- t/ Harvey Cody, Conservation Attorney
for the Corporation Commission
of the State of Oklahoma

ATTORNEYS FOR THE DEFENDANT
CORPORATION COMMISSION OF THE
STATE OF OKLAHOMA AND THE
COMMISSIONERS IN THEIR
OFFICIAL CAPACITIES.

[CERTIFICATE OF MAILING OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

[TITLE OMITTED IN PRINTING]

A N S W E R

Come now the defendants, ex rel., The Oklahoma State Personnel Board and Nathan A. Sams, Chairman, A. E. Plume, Vice-Chairman, Tom R. Moore, Member, Raymond H. Fields, Member, E. W. Harper, Member, Joseph Turner, Member, and Mrs. John D. (Helen) Cole, Member, as mem-

bers of the defendant, Oklahoma State Personnel Board; and Keith B. Frosco, Director of the Oklahoma State Personnel Board; and Larry Derryberry, Attorney General of Oklahoma, and for their Answer to the Complaint of plaintiffs state:

FIRST RESPONSE

Defendants admit the allegations of paragraph one (1) of plaintiff's Complaint.

SECOND RESPONSE

Defendants admit the allegations of paragraph two (2) of plaintiff's Complaint with the exception that A. E. Plume and Raymond H. Fields are now the Chairman and Vice-Chairman respectively of the Oklahoma State Personnel Board.

THIRD RESPONSE

Defendants admit the allegations of paragraph three (3) of plaintiff's Complaint.

FOURTH RESPONSE

Paragraph four (4) of plaintiff's Complaint does not require a response.

FIFTH RESPONSE

Defendants admit that plaintiffs' action is a civil class action and that it is impractical to bring all of them before the Court; defendants have no knowledge of the additional allegations in paragraph five (5) of plaintiffs' Complaint and are unable to admit or deny these allegations.

SIXTH RESPONSE

Defendants deny the allegations in paragraph six (6) of plaintiff's Complaint.

SEVENTH RESPONSE

Defendants deny the allegations in paragraph seven (7) of plaintiff's Complaint.

EIGHTH RESPONSE

Defendants deny the allegations in paragraph eight (8) of plaintiff's Complaint.

NINTH RESPONSE

Defendants deny the allegations in paragraph nine (9) of plaintiffs' Complaint.

TENTH RESPONSE

Defendants deny the allegations in paragraph ten (10) of plaintiffs' Complaint.

ELEVENTH RESPONSE

Defendants deny the allegations in paragraph eleven (11) of plaintiffs' Complaint.

TWELFTH RESPONSE

Defendants deny the allegations in paragraph twelve (12) of plaintiffs' Complaint.

THIRTEENTH RESPONSE

Defendants have no knowledge of the allegations contained in paragraph thirteen (13) of plaintiffs' Complaint and are therefore unable to admit or deny these allegations.

FOURTEENTH RESPONSE

Defendants deny the allegations of paragraph fourteen (14) of plaintiffs' Complaint with the exception that letters were sent to plaintiffs individually by defendant State Personnel Board informing them that they were charged with prohibited political activity under Section 818.

FIRST DEFENSE

Defendants allege that all of the act and actions of each of the defendants herein named has been in accordance with the laws of the State of Oklahoma.

SECOND DEFENSE

Defendants specifically deny that any of the statutes cited in the plaintiffs' Complaint are unconstitutional.

WHEREFORE, the defendants pray that the plaintiffs' Complaint be denied, and that 74 O.S. 1961, §818, be declared valid and the Oklahoma State Personnel Board be allowed to proceed in accordance therewith.

Respectfully submitted,

LARRY DERRYBERRY
ATTORNEY GENERAL OF OKLAHOMA

s/ **BY Paul C. Duncan**
PAUL C. DUNCAN
ASSISTANT ATTORNEY GENERAL
CHIEF, CIVIL DIVISION

s/ **BY Mike D. Martin**
MIKE D. MARTIN
ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR DEFENDANTS,
THE OKLAHOMA STATE PERSON-
NEL BOARD, NATHAN A. SAMS,
CHAIRMAN, A. E. PLUME, VICE-
CHAIRMAN, TOM R. MOORE, MEM-
BER, RAYMOND H. FIELDS, MEM-
BER, E. W. HARPER, MEMBER,
JOSEPH TURNER, MEMBER, MRS.
JOHN D. (HELEN) COLE, MEMBER,
AND LARRY DERRYBERRY,
ATTORNEY GENERAL OF
OKLAHOMA

Filed, December 10, 1971

[CERTIFICATE OF MAILING OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

[TITLE OMITTED IN PRINTING]

PRERIAL ORDER

A pretrial conference was held in the above entitled cause before Honorable Luther B. Eubanks, Judge, on the 28th day of December, 1971. Terry Shipley and John C. Buckingham appeared a counsel for plaintiffs; and Mike Martin appeared as counsel for the defendants, The State of Oklahoma, ex rel., The Oklahoma State Personnel Board, and Nathan A. Sams, Chairman, A. E. Plume, Vice-Chairman, Tom R. Moore, Member, Raymond H. Fields, Member, E. W. Harper, Member, Joseph Turner, Member, and Mrs. John D. (Helen) Cole, Member, in their individual capacities and as members of the defendant, Oklahoma State Personnel Board; and Keith B. Frosco, Director of the Oklahoma State Personnel Board; and Larry Derryberry, Attorney General of Oklahoma; and Harvey Cody appeared as counsel for the defendant, the Corporation Commission of the State of Oklahoma, Charles Nesbitt, Chairman, Ray C. Jones, Vice-Chairman, and Wilburn Cartwright, Member, in their individual capacities and as members of the defendant, Corporation Commission.

NATURE OF THE PROCEEDINGS

This is an action by plaintiffs for themselves and for the Class, "Classified Employees within the Classified Service of the State of Oklahoma," seeking declaratory and injunctive relief against the defendants based upon the allegation that certain portions of Section 818 of Title 74, O.S. 1961 (a part of the "Merit System Act") are in violation of the rights guaranteed to the plaintiffs by the Constitution of the United States. Subsequent to the filing of the Complaint herein, the parties by stipulation and agreement made it unnecessary that any preliminary injunctive relief be taken. Consequently, the relief which plaintiffs

request at this time is of declaratory and permanent injunctive nature.

JURISDICTION

It is stipulated and agreed that this Court has full jurisdiction of all parties and of the subject matter of this action, and that this matter should be tried before a three-judge panel, pursuant to the Federal Rules of Civil Procedure.

ADMITTED FACTS AND STIPULATIONS

Attached hereto, marked Exhibit "A" and made a part hereof are the admitted facts and stipulations entered into between all of the parties.

PLAINTIFFS' CONTENTIONS

Plaintiffs contend that the defendants, and each of them, under color of 74 O.S., Section 818, in pertinent part as follows:

"No employee in the classified service, and no member of the Personnel Board shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; and no state officer or state employee in the unclassified service shall solicit or receive any such assessment, subscription, or contribution from an employee in the classified service.

"No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote."

are subjecting plaintiffs to the deprivation of the rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States. In more particularity, plaintiffs contend:

1. That the blanket prohibition of political activity in Section 818 is an unjustified encroachment upon the plaintiff's First Amendment rights of free speech, assembly and press;
2. That the above quoted paragraphs of Section 818 are extremely broad in that they abridge plaintiffs' First Amendment rights to a far greater extent than is required to correct the evils at which the Statute is directed;
3. That the above quoted paragraphs of Section 818 are unconstitutionally vague, and reasonable men often differ as to their interpretation and may only guess at what activities fall within the broad prohibitions in the Statute;
4. That the above quoted paragraphs of Section 818 deny the equal protection of the laws to the class of citizens affected by the Statute in that it denies to that group of citizens the rights granted to all other citizens without justification for the distinction.
5. That the above quoted paragraphs of Section 818 divest the plaintiffs Fifth and Fourteenth Amendment guarantees of due process of law in that plaintiffs are denied their political liberty without justification;
6. That Section 818 divests the class of Fifth and Fourteenth Amendment guarantees of substantive due process of law in that their vested property rights are subject to divestment without just cause or due process;
7. That plaintiffs, William M. Broadrick, Jimmy R. Ury, and Clive R. Rigsby, by virtue of their employment with the State of Oklahoma, have acquired valuable vested property rights. The Merit System of Personnel Administration Act of Oklahoma, *supra*, vests said plaintiffs with rights of tenure during good behavior and the Oklahoma

Retirement System Act vests said plaintiffs with valuable retirement benefits upon the condition that said plaintiffs be employed in good standing upon the date of their retirement;

8. That the defendants threaten to invoke the sanctions of Section 818 against said plaintiffs for certain alleged political activities of the plaintiffs, and the defendant, Oklahoma State Personnel Board, and its members threaten to order the defendant, Corporation Commission, and its members to dismiss plaintiffs from their employment pursuant to Section 818 which requires the defendant, Corporation Commission, to comply;

9. That plaintiffs have no adequate remedy at law and the defendants will, if not enjoined by this Court, undertake to effect the dismissal of plaintiffs from their employment, all under color of Section 818.

**CONTENTIONS OF THE DEFENDANTS,
CORPORATION COMMISSION OF THE STATE OF
OKLAHOMA, CHARLES NESBITT, CHAIRMAN,
RAY C. JONES, VICE-CHAIRMAN, AND WILBURN
CARTWRIGHT, MEMBER, IN THEIR INDIVIDUAL
CAPACITIES AND AS MEMBERS OF THE
DEFENDANT, CORPORATION COMMISSION**

The above defendants contend that:

1. They consider the plaintiffs good employees and have not threatened to dismiss them, or any of them, and have no intention to dismiss them unless required to do so by a lawful order of an authority authorized by law to compel aid defendants to dismiss plaintiffs from their employment;

2. The defendant, Oklahoma State Personnel Board, as of the time of the filing of the answer of the above named defendants herein, had not furnished the said defendants with any details or information concerning the violations of the Merit System Act other than the copy of

the original notice of the general charges made by the Board, and that said defendants were not informed as to the specific violations which the Board may expect to prove and that said defendants deny that they solicited or encouraged the plaintiffs to take part in any political activities at any time.

CONTENTIONS OF THE DEFENDANTS, THE STATE OF OKLAHOMA, EX REL., THE OKLAHOMA STATE PERSONNEL BOARD, AND NATHAN A. SAMS, CHAIRMAN, TOM R. MOORE, MEMBER, RAYMOND H. FIELDS, MEMBER, E. W. HARPER, MEMBER, JOSEPH TURNER, MEMBER, AND MRS. JOHN D. (HELEN) COLE, MEMBER, IN THEIR INDIVIDUAL CAPACITIES AND AS MEMBERS OF THE DEFENDANT, OKLAHOMA STATE PERSONNEL BOARD; AND KEITH B. FROSCO, DIRECTOR OF THE OKLAHOMA STATE PERSONNEL BOARD; AND LARRY DERRYBERRY, ATTORNEY GENERAL OF OKLAHOMA

The above named defendants contend as follows:

1. That they specifically deny that they, or any of them, under color of 74 O.S. 1961, Section 818, are subjecting plaintiffs to the deprivation of the rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States;
2. That they specifically deny that the blanket prohibition of political activity in Section 818 is an unjustified encroachment upon the plaintiffs First Amendment rights of free speech, assembly and press;
3. That they specifically deny that Section 818 is overly broad in that it abridges plaintiffs' First Amendment rights to a far greater extent than is required to correct the evils at which the Statute is directed;
4. That they specifically deny that Section 818 is unconstitutionally vague, and reasonable men often differ as

to its interpretation and may only guess at what activities fall within the broad prohibitions in the Statute;

5. That they specifically deny that Section 818 denies the equal protection of the laws to the class of citizens affected by the Statute in that it denies to that group of citizens the rights granted to all other citizens without justification for the distinction;

6. That they specifically deny that Section 818 divests the plaintiffs' Fifth and Fourteenth Amendment guarantees of due process of law in that plaintiffs are denied their political liberty without justification;

7. That they specifically deny that Section 818 divests the class of Fifth and Fourteenth Amendment guarantees of substantive due process of law in that plaintiffs' vested property rights are subject to divestment without just cause or due process;

8. That as to plaintiffs' Contention No. 7, these defendants have no knowledge as to said allegations, and therefore are unable to admit or deny same;

9. That they specifically deny that plaintiffs have no adequate remedy at law;

10. That all of the acts and actions of each of the defendants above named have been in accordance with the laws of the State of Oklahoma;

11. Said defendants specifically deny that any of the Statutes cited in plaintiffs' Complaint are unconstitutional.

CONTESTED ISSUES OF FACT

The contested issues of fact relate to the alleged vagueness, over-breadth and chilling effect of the above quoted paragraphs of Section 818. It is admitted that these issues may be issues of combined questions of law and fact. To the extent that same are susceptible of evidentiary proof, evidence shall be introduced by plaintiffs thereon.

CONTESTED ISSUES OF LAW

1. That the blanket prohibition of political activity in Section 818 is an unjustified encroachment upon the plaintiffs' First Amendment rights of free speech, assembly and press;
2. That Section 818 is overly broad in that it bridges plaintiffs' First Amendment rights to a far greater extent than is required to correct the evils at which the Statute is directed;
3. That Section 818 is unconstitutionally vague, and reasonable men often differ as to its interpretation and may only guess at what activities fall within the broad prohibitions in the Statute;
4. That Section 818 denies the equal protection of the laws to the class of citizens affected by the Statute in that it denies to that group of citizens the rights granted to all other citizens without justification for the distinction;
5. That Section 818 divests the plaintiffs' Fifth and Fourteenth Amendment guarantees of due process of law in that plaintiffs are denied their political liberty without justification;
6. That Section 818 divests the class of Fifth and Fourteenth Amendment guarantees of substantive due process of law in that plaintiffs' vested property rights are subject to divestment without just cause or due process;
7. That plaintiffs, William M. Broadrick, Jimmy R. Ury, and Clive R. Rigsby, by virtue of their employment with the State of Oklahoma, have acquired valuable vested property rights. The Merit System of Personnel Administration Act of Oklahoma, supra, vests said plaintiffs with rights of tenure during good behavior and the Oklahoma Retirement System Act vests said plaintiffs with valuable retirement benefits upon the condition that said plaintiffs be employed in good standing upon the date of their retirement;

8. That the defendants threaten to invoke the sanctions of Section 818 against said plaintiffs for certain alleged political activities of the plaintiffs, and the defendant, Oklahoma State Personnel Board, and its members threaten to order the defendant, Corporation Commission, and its members to dismiss plaintiffs from their employment pursuant to Section 818 which requires the defendant, Corporation Commission, to comply;

9. That plaintiffs have no adequate remedy at law and the defendants will, if not enjoined by this Court, undertake to effect the dismissal of plaintiffs from their employment, all under color of Section 818.

EXHIBITS TO BE INTRODUCED

It is stipulated and agreed that the following exhibits may be introduced and admitted into evidence without identification:

1. A copy of the full text of Section 818 of Title 74 O.S. 1961, with underscoring of the paragraphs or language therein contended unconstitutional by the plaintiffs.

2. Any and all copies of Attorney General's opinions which either party may feel determine either issues of law or fact herein without identification or objection.

3. Copy of the opinion rendered by the Fifth Circuit, in the following case: Hobbs, et al v. Thompson, et al, in the United States Court of Appeals for the Fifth Circuit, No. 30704, Appeal from the United States District Court for the Middle District of Georgia, and dated September 16, 1971.

WITNESSES

Names and addresses of all witnesses shall be exchanged by the parties prior to the tenth day before trial date. Summaries of witnesses' testimony shall also be exchanged prior to the tenth day before trial date.

AMENDED PLEADINGS

Pleadings are amended to conform to the statement of the contentions of the parties contained in this Pretrial Order.

PROBABLE LENGTH OF TRIAL

The parties have agreed to limit witnesses, other than the parties, to not more than six (6) each. The probable length of trial of this case will be one-half (1/2) day.

This suit has been ordered for trial on January 20, 1972.

/s/ LUTHER B. EUBANKS
Luther B. Eubanks
United States District Judge

APPROVED:

- s/ Terry Shipley
Terry Shipley
- s/ John C. Buckingham
John C. Buckingham
Attorney for Plaintiffs
- s/ Mike Martin
Mike Martin, Attorney for de-
fendants, Oklahoma State Per-
sonnel Board and Larry Derryberry,
Attorney General of Oklahoma
- s/ Harvey Cody
Harvey Cody, Attorney for de-
fendant, Corporation Commission
of Oklahoma

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

[TITLE OMITTED IN PRINTING]

STIPULATIONS

The parties hereto, and each of them, do hereby stipulate and agree to the matters and things set out below for the purpose of this trial only:

1. That Plaintiffs, William M. Broadrick, Jimmy R. Ury and Chive R. Rigsby are each citizens of the United States of America and the State of Oklahoma.

2. That each plaintiff is, and has been at all times material herein, an employee of the defendant Corporation Commission of the State of Oklahoma, an agency and instrumentality of the State of Oklahoma, herein called "Commission."

3. That each plaintiff is a classified employee of the State within the purview of the Merit System of Personnel Administration Act of Oklahoma, 74 O.S. 1961, Sections 801 et seq (1959), herein called "Merit Act."

4. The Merit Act is administered by the Oklahoma State Personnel Board, an agency and instrumentality of the State of Oklahoma, herein called "Personnel Board."

5. That there are approximately 20,000 classified employees of the State, and the employees of the Commission were included in the classified service on August 1, 1968.

6. On October 15, 1971, the Personnel Board initiated certain proceedings against each plaintiff, accusing them of taking part in the management or affairs of a political campaign contrary to the statute; and on December 1, 1971, the Personnel Board furnished more detailed descriptions of the charges by separate letters to each plaintiff. The letters are attached hereto, incorporated herein by reference and marked "Exhibit A."

7. That since the Complaint was filed in this cause, defendant Joseph Turner has resigned as a member of the Personnel Board; defendant A. E. Plume has been elected Chairman of the Personnel Board and defendant Raymond H. Fields is now Vice-Chairman of the Personnel Board. The other members of the Personnel Board are defendants Nathan A. Sams, Tom R. Moore, E. W. Harper and Mrs. John D. (Helen) Cole.

8. That the defendant Commission is composed of defendants Charles Nesbitt, Chairman; Ray C. Jones, Vice-Chairman; and Wilburn Cartwright, Member, and will be required to discharge each plaintiff from his employment if so directed by the Personnel Board in the manner and form prescribed by that part of 74 O.S. 1961, Section 818, unnumbered paragraph 7, which provides:

"* * * If the officer or employee shall be found guilty by the State Personnel Board of the violation of any provision of this Section, the Board shall direct the appointing authority to dismiss such officer or employee, and the appointing authority so directed shall comply."

9. That 74 O.S. 1961, Section 819, declares violations of Section 818, supra, to be a crime and proscribes additional criminal sanctions as follows, to-wit:

"Any person who willfully violates any provision of this Act or of any rule or regulation adopted pursuant to the authority herein granted shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1000.00), or by imprisonment for not longer than six (6) months, or by both such fine and imprisonment."

"Any person who is convicted of a misdemeanor under this Act shall, for a period of five years, be

ineligible for appointment to or employment in a position in State service, and if he or she is an employee of the State, shall forfeit his or her position."

10. That the following rules and regulations of the Personnel Board are and have been in effect at all times material herein:

"1209.2 REQUIRED RESIGNATION.

"Any classified employee shall resign his position prior to filing as a candidate for public office, seeking or accepting nomination for election or appointment as an official of a "political party, partisan political club or organization or serving as a member of a committee of any such group or organization."

1600 GENERAL PROHIBITIONS AGAINST POLITICAL ACTIVITY AND COERCION AND AGAINST INFLUENCES OTHER THAN MERIT.

1630 NO POLITICAL ASSESSMENTS.

"No employee in the classified service, and no member of the Personnel Board shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; and no state officer or state employee in the unclassified service shall solicit or receive any such assessment, subscription or contribution from an employee in the classified service."

1640 NO ORGANIZED POLITICAL ACTIVITY.

"No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any

political party or in any political campaign, except to exercise his rights as a citizen privately to express his opinion and to cast his vote.

1641 *DISPLAY OF PARTISAN MATERIAL.*

"An employee in the classified service may not wear a political badge, button, or similar partisan emblem, nor may such employee display a partisan political sticker or sign on an automobile operated by him or under his control. Continued use or display of such political material shall be deemed willful intent to violate the provisions of 74 O.S. 1961 §818 relating to prohibited political activities of classified State employees and shall subject such employee to dismissal pursuant to said statute."

1650 *PENALTY FOR VIOLATION.*

"Upon a showing of substantial evidence by the Personnel Director that any officer or employee in the state classified service, has knowingly violated any of the provisions concerning restricted political activity, discrimination or other prohibited act, the State Personnel Board shall notify the officer or employee so charged and the Appointing Authority under whose jurisdiction the officer or employee serves. If the officer or employee so desires, the State Personnel Board shall hold a public hearing, or shall authorize the Personnel Director to hold a public hearing, and submit a transcript thereof, together with a recommendation, to the State Personnel Board. Relevant witnesses shall be allowed to be present and testify at such hearings. If the officer or employee shall be found guilty by the State Personnel Board of the violation of any provision concerning restricted political activity, discrimination or other prohibited act, the Board shall direct the Appointed Authority to dismiss such officer or employee; and the Appointing Authority so directed shall comply."

- s/t Terry Shipley
119½ South Third Street
Noble, Oklahoma 73068 872-5111
Oklahoma City, Oklahoma 236-1200
- s/t John C. Buckingham
Suite 1213, 100 Park Ave Building
Oklahoma City, Oklahoma 73102
Attorneys for Plaintiffs
- s/t Harvey Cody
Attorney for Defendant Corporation
Commission of Oklahoma
- s/ Mike D. Martin
- t/ Larry Derryberry, Attorney General
of Oklahoma by Mike Martin
Attorney for Defendant Oklahoma
State Personnel Board

Filed January 7, 1972

[Letterhead of Oklahoma State Personnel Board]

December 1, 1971

Terry G. Shipley
119½ South Third Street
Noble, Oklahoma 73068

John C. Buckingham
Suite 1213
100 Park Avenue Building
Oklahoma City, Oklahoma 73102

Certified Mail
No. 211026

RE: PAH 3-71-3

Gentlemen:

I have received your letters of November 3 and 12, 1971, concerning the State Personnel Board's charges of prohibited political activity against state classified employee, Clive R. Rigsby.

Based upon your request in the latter communication, and in accordance with Section 309 (4) of Title 75 O.S., Supp. 1970, we submit the following additional information concerning the charges and same represents the basic charges as of this date. Additional information will be forwarded as appropriate.

Generally, Mr. Rigsby knowingly violated the provisions of Title 74 O.S. 1961, Section 818, in that he took part in the management or affairs of a political campaign, and solicited campaign contributions.

Specifically, Mr. Rigsby participated in the 1970 re-election campaign of Corporation Commissioner Ray C. Jones by:

1. Seeking out other Corporation Commission employees to assist in the campaign. Those employees contacted by Mr. Rigsby concerning their assistance in the campaign include Cecil F. Smith of Ada, who was talked to in person at the Oil and Gas Conservation Division District Office in Ada a short time prior to the general election of November 3, 1970.
2. Soliciting money to be used in the campaign, Mr. Rigsby talked to in person Cecil F. Smith of Ada at the Oil and Gas Conservation Division District Office in Ada a short time prior to the primary election of August 25, 1970, and solicited his contribution of money to the campaign.

The objections you stated in your letter of November 3, 1971, are hereby noted, and are considered as motions. The Board will decide whether to hear arguments at the time of the public hearings, or on an earlier date; ample notice will be given.

Sincerely,

OKLAHOMA STATE MERIT SYSTEM

s/ Keith B. Froscio

Keith B. Froscio, Director

KBF:daw

cc: Clive R. Rigsby, R. R. 1, Box 102-A, Ada, Oklahoma
74820

A. E. Plume, Chairman, Oklahoma State Personnel
Board, Ardmore, Oklahoma 73401

[Letterhead of Oklahoma State Personnel Board]

December 1, 1971

Terry G. Shipley
119½ South Third Street
Noble, Oklahoma 73068

John C. Buckingham
Suite 1213
100 Park Avenue Building
Oklahoma City, Oklahoma 73102

Certified Mail
No. 211026

RE: PAH 2-71-2

Gentlemen:

I have received your letters of November 3 and 12, 1971, concerning the State Personnel Board's charges of prohibited political activity against state classified employee, Jammy R. Ury.

Based upon your request in the latter communication, and in accordance with Section 309 (4) of Title 75 O.S., Supp. 1970, we submit the following additional information concerning the charges and same represents the basic charges as of this date. Additional information will be forwarded as appropriate.

Generally, Mr. Ury knowingly violated the provisions of Title 74 O.S., 1961, Section 818, in that he took part in the management or affairs of a political campaign.

Specifically, Mr. Ury participated in the 1970 re-election campaign of Corporation Commissioner Ray C. Jones by talking in person to Cecil F. Smith, Charles E. Conley, Jr.,

and Don E. Colston at the Davis weigh station in April or May of 1970, and sought their referrals to persons who might assist in the campaign. Also contacted concerning referrals to persons who might assist in the campaign were:

(a) Doris F. McKeever of Duncan, Dorothy S Klinnert of Omega, Charles E. Conley, Jr. of Midwest City, Don E. Colston of Moore, Kenneth D. Donley, Vernon Clark and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Kingfisher during October, 1970.

(b) Cecil B. Smith of Ada, O. T. Perrin, Hubert H. Hibbin, Zachary Sweeney and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Ada during October, 1970.

(c) Jody L. Kirk, James O. Echols, Woodrow W. Lillard, Victor W. Hodge and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Bristow during October, 1970.

(d) Albert E. Deudauer, Jim W. Martin, Carter E. Scott and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Duncan during October, 1970.

The objections you stated in your letter of November 3, 1971, are hereby noted, and are considered as motions. The Board will decide whether to hear arguments at the time of the public hearings, or on an earlier date; ample notice will be given.

Sincerely,

OKLAHOMA STATE MERIT SYSTEM

/s/ Keith B. Froscio
Keith B. Froscio, Director

KBF:daw

cc: Jimmy R. Ury, 4816 Woodview, Oklahoma City, Oklahoma 73115

A. E. Plume, Chairman, Oklahoma State Personnel Board, Ardmore, Oklahoma 73401

[Letterhead of Oklahoma State Personnel Board]

December 1, 1971

Terry G. Shipley
119½ South Third Street
Noble, Oklahoma 73068

John C. Buckingham
Suite 1213
100 Park Avenue Building
Oklahoma City, Oklahoma 73102

Certified Mail
No. 211026

RE: PAH 1-71-1

Gentlemen:

I have received your letters of November 3 and 12, 1971, concerning the State Personnel Board's charges of prohibited political activity against state classified employee, William M. Broadrick.

Based upon your request in the latter communication, and in accordance with Section 309 (4) of Title 75 O.S., Supp. 1970, we submit the following additional information concerning the charges and same represent the basic charges as of this date. Additional information will be forwarded as appropriate.

Generally, Mr. Broadrick knowingly violated the provisions of Title 74, O.S. 1961, Section 818, in that he took part in the management or affairs of a political campaign, and solicited and received campaign contributions.

Specifically, Mr. Broadrick participated in the 1970 re-election campaign of Corporation Commissioner Ray C. Jones by:

1. Contacting other Corporation Commission employees seeking advice as to Commission employees who might "kick in" concerning the campaign. Those employees which Mr. Broadrick contacted concerning other Commission employees who might "kick in" include Cecil F. Smith of Ada, who was talked to in person at a roadside cafe between Asher and Ada a short time prior to the primary election of August 25, 1970.
2. Contacting other Corporation Commission employees seeking their referrals to persons who might assist in the campaign. The employees Mr. Broadrick contacted concerning referrals to person who might assist in the campaign include:
 - (a) Cecil F. Smith of Ada who was talked to in person at a roadside cafe between Asher and Ada a short time prior to the primary election on August 25, 1970.
 - (b) Cecil F. Smith of Ada who was talked to in person at the Oil and Gas Conservation Division District Office in Ada a short time prior to the primary election on August 25, 1970.
 - (c) Doris F. McKeever of Duncan, Dorothy S. Klinnert of Omega, Charles E. Conley, Jr. of Midwest City, Don E. Colston of Moore, Kenneth D. Donley, Vernon Clark and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Kingfisher, during October, 1970.

(d) Cecil F. Smith of Ada, O. T. Perrin, Hubert H. Hibbin, Zachary Sweeney and other Commission employee who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Ada during October, 1970.

(e) Jody L. Kirk, James O. Echols, Woodrow W. Lillard, Victor W. Hodge and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Bristow during October, 1970.

(f) Albert E. Deudauer, Jim W. Martin, Carter E. Scott and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Duncan during October, 1970.

3. Directly soliciting money to be used in the campaign. Mr. Broadrick talked in person to Cecil F. Smith of Ada at the Oil and Gas Conservation Division District Office in Ada a short time prior to the general election of November 3, 1970, and solicited his share of the campaign expenses.
4. Directly receiving solicited money to be used in the campaign. Mr. Broadrick talked in person to Cecil F. Smith of Ada at the Oil and Gas Conservation Division District Office in Ada a short time prior to the general election of November 3, 1970, and received from him approximately \$22.00 as his share of solicited campaign contributions.
5. Directly receiving a contribution of money to be used in the campaign. Mr. Broadrick talked in person to Cecil F. Smith of Ada at the Oil and Gas Conservation Division District Office in Ada a

short time prior to the general election of November 3, 1970, and received from him a contribution of approximately \$22.00.

6. Receiving and distributing campaign posters, Mr. Broadrick received directly and/or indirectly campaign posters from the printer, Central Process and Sales Co. of Tulsa, and contacted Don E. Colston of Marietta by telephone at his home in July, 1970, concerning the receipt and distribution of the campaign posters. Also contacted concerning the receipt and distribution of campaign posters were:

(a) Doris F. McKeever of Duncan, Dorothy S. Klinnert of Omega, Charles E. Conley, Jr. of Midwest City, Don E. Colston of Moore, Kenneth D. Donley, Vernon Clark and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Kingfisher during October, 1970.

(b) Cecil F. Smith of Ada, O. T. Perrin, Hubert H. Hibbin, Zachary Sweeney and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Ada during October, 1970.

(c) Jody L. Kirk, James O. Echols, Woodrow W. Lillard, Victor W. Hodge and other Commission employees who were talked to individually and/or as a group during a staff meeting at the Oil and Gas Conservation Division District Office in Britton during October, 1970.

(d) Albert E. Deudauer, Jim W. Martin, Carter E. Scott and other Commission employees who were talked to individually and/or as a group dur-

ing a staff meeting at the Oil and Gas Conservation Division District Office in Duncan during October, 1970.

The objections you stated in your letter of November 3, 1971, are hereby noted, and are considered as motions. The Board will decide whether to hear arguments at the time of the public hearings, or on an earlier date; ample notice will be given.

Sincerely,

OKLAHOMA STATE MERIT SYSTEM

s/ Keith B. Froscio
Keith B. Froscio, Director

KBF:daw

cc: William M. Broadrick, 821 Nancy Drive, Ada, Oklahoma, 74820

A. E. Plume, Chairman, Oklahoma State Personnel Board, Ardmore, Oklahoma 73401

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

No. CIV-71-696

WILLIAM M. BROADRICK, ET AL.,)
Plaintiffs,)

vs.)

) **No. CIV-71-696**

THE STATE OF OKLAHOMA, EX REL,)
THE OKLAHOMA STATE PERSONNEL)
BOARD, ET AL.,)

Defendants.)

ORDER

The above entitled action came on for trial before the Court on January 20, 1972, the plaintiffs appearing in person and by their attorneys, Terry Shipley and John C.

Buckingham; Mike D. Martin, Assistant Attorney General, appearing as counsel for the defendants, The State of Oklahoma, ex rel, The Oklahoma State Personnel Board, and A. E. Plume, Chairman, Raymond H. Fields, Vice-Chairman, Nathan A. Sams, Member, Tom R. Moore, Member, E. W. Harper, Member, Mrs. John D. (Helen) Cole, Member, Oklahoma State Personnel Board; and Keith B. Frosco, Director of the Oklahoma State Personnel Board; and Larry Derryberry, Attorney General of Oklahoma; Jack A. Swidensky and Harvey Cody appearing as counsel for the defendants, the Corporation Commission of the State of Oklahoma, Charles Nesbitt, Chairman, Ray C. Jones, Vice-Chairman, and Wilburn Cartwright, Member. Testimony having been offered and briefs filed by all parties, and the Court having filed its Findings of Fact, Conclusions of Law, and its Memorandum Opinion herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that judgment be for the defendants and plaintiffs' cause of action is hereby dismissed.

Dated this 28th day of February, 1972.

s/ William J. Holloway, Jr.
UNITED STATES CIRCUIT JUDGE

s/ Fred Daugherty
UNITED STATES DISTRICT JUDGE

s/ Luther B. Eubanks
UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED IN CIVIL DOCKET
ON FEB 28, 1972

ADELAIDE HOLSTON, DEPUTY.

APPROVED AS TO FORM:

s/t Terry Shipley
Attorneys for Plaintiffs

s/t Mike D. Martin

Assistant Attorney General

Attorney for Defendants, The Oklahoma State Personnel Board, A. E. Plume, Chairman, Raymond H. Fields, Vice-Chairman, Nathan A. Sams, Member, Tom R. Moore, Member, E. W. Harper, Member, Mrs. John D. (Helen) Cole, Member; Keith B. Froscio, Director of the Oklahoma State Personnel Board; and Larry Derryberry, Attorney General of Oklahoma

Filed February 28, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

[TITLE OMITTED IN PRINTING]

MOTION FOR NEW TRIAL

Come now the plaintiffs, William M. Broadrick, Jimmy R. Ury, and Clive R. Rigsby, for themselves and for the Class "Classified Employees within the Classified Service of the State of Oklahoma," and pursuant to Rule 59 of the Federal Rules of Civil Procedure respectfully move that the judgment entered herein on the 28th day of February, 1972, be vacated and set aside, and that a new trial be granted on the grounds that the said judgment is against the evidence, and for the further reason that said judgment is against and contrary to the law.

Attached hereto is plaintiffs' Brief in support hereof.

s/t TERRY SHIPLEY

1191½ South Third Street

Noble, Oklahoma 73068

872-5111

Oklahoma City, Oklahoma 236-1200

t/ John C. Buckingham
Suite 1213, 100 Park Avenue Building
Oklahoma City, Oklahoma 73102

Attorneys for Plaintiff

Filed March 9, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

Oklahoma City, Oklahoma

Date: March 31, 1972

BROADRICK, et al

Plaintiff,

vs.

STATE OF OKLAHOMA, et al

Defendant.

Case No. 71-696 Civil

ENTER ORDER:

By order of Judges Holloway, Daugherty and Eubanks
the motion of plaintiffs for a new trial filed herein on
March 9, 1972 is overruled.

Counsel Notified []

Clerk to Notify [XXX]

s/ Luther B. Eubanks

United States District Judge

Filed April 3, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

[TITLE OMITTED IN PRINTING]

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that William M. Broadrick, Jimmy R. Ury, and Clive R. Rigsby, the Plaintiffs above named, hereby appeal to the Supreme Court of the United States from the Final Order entered by the Three Judge Court in this action on March 31, 1972, denying Plaintiffs' Motion for a New Trial on the Order entered in this action on February 28, 1972, denying the declaratory and injunctive relief prayed for in the Complaint pursuant to 42 U.S.C., §1983.

This appeal is taken pursuant to 28 U.S.C. §§1253 and 2284, and 42 U.S.C. §1984.

s/t John C. Buckingham
100 Park Avenue Building
Suite 1213
Oklahoma City, Oklahoma 73102

Filed April 21, 1972

[CERTIFICATE OF MAILING OMITTED IN PRINTING]